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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,689	02/02/2004	Junji Tsutsumi	023971-0358	7669
22428	7590	06/15/2006	EXAMINER	
FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				MANCHO, RONNIE M
			ART UNIT	PAPER NUMBER
			3663	

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/768,689	TSUTSUMI ET AL.	
	Examiner Ronnie Mancho	Art Unit 3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 February 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/2/04.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1-11 in the reply filed on 2-1-06 is acknowledged.
2. Claim 12 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2-1-06.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "vehicular speed variation rate limiter" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, 2, etc, it is not clear what all is meant and encompassed by the phrase, “vehicular speed variation rate limiter”. The specification on pages 4 and 5 recite the claimed “vehicular speed variation rate limiter”, but does not explain the meaning of the limitation.

In claim 1, it is not clear what all is meant and encompassed by the limitation, “the vehicular motion target value calculating section using an output of the vehicular speed variation rate limiter for a map reference vehicle speed and the control command value calculating section using the output of the vehicular speed variation rate limiter to the detection value of the vehicle speed for a control command value calculation”. The application seems to be a direct or word-for-word translation from a foreign language. The rejection also applies to claims 3-11. In claim 3-11, the claim limitations appear to be very verbose rendering the scope of the invention unclear.

In claim 2, it is not clear what is meant and encompassed by “larger” or “smaller”. One skilled in the art will need a standard by which to judge something as being “larger” or “smaller”. The applicant has not provided such a standard by which the limitations, “larger” or “smaller” are ascertained.

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

8. In claim 1, the limitation, the vehicular motion target value calculating section using an output of the vehicular speed variation rate limiter for a map reference vehicle speed and the control command value calculating section using the output of the vehicular speed variation rate limiter to the detection value of the vehicle speed for a control command value calculation” is not enabled, although the limitation is recited word for word in the specification.

Claims 3-11 suffer the same deficiency and are thus not enabled even though the limitations are recited word for word in the specification.

#### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Sudo et al (5957987).

Regarding claims 1 and 2, Sudo (figs. 1-3, abstract; cols. 3-7) disclose a vehicular motion control apparatus comprising:

a steering angle (14, 15; col. 3, lines 32-49) detecting section that detects a vehicular steering angle;

a vehicle speed detecting section 16 that detects a vehicle speed (col. 3, lines 32-49);

a vehicular motion control mechanism 38 (fig. 3, col. 4, lines 30-40) that is capable of controlling a vehicular motion;

a state detecting section 16 (col. 3, lines 32-35, 49-54) that detects a state of the vehicular motion control mechanism;

a vehicular motion target value 41 (col. 4, lines 41-56) calculating section that calculates a target value of the vehicular motion for a response characteristic on a vehicular plane motion to be enabled to provide a predetermined response characteristic on the basis of detection values of the steering angle and the vehicle speed and vehicle speed dependent constants preset in a form of a map for each vehicle speed;

a control command value calculating section 4 (col. 4, lines 41-50) that calculates a vehicular motion control mechanism command value required to achieve the target value of the vehicular motion; and

a servo calculating section 43 (fig. 3, col. 4, lines 62+) that provides a control signal for a rear road wheel steering actuator in such a manner that a detection value of the state of the vehicular motion control mechanism is made coincident with the motion control mechanism command value; and

a vehicular velocity variation rate limiter 41(col. 4, lines 41-56; col. 2, lines 15-30) that places a limitation on a vehicle speed variation rate and varies in accordance with the detection value of the vehicular steering angle, the vehicular motion target value calculating section using an output of the vehicular speed variation rate limiter for a map reference vehicle speed and the control command value calculating section using the output of the vehicular speed variation rate limiter to the detection value of the vehicle speed for a control command value calculation.

The statement of intended use or field of use, "that detects", "capable of", "that calculates", "to be enabled", "that provides", "is made coincident with", "that places a limitation on", etc clauses are essentially method limitation or statement of intended or desired use. Thus, the claim as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647. See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Regarding claim 3-11, Sudo (figs. 1-3, abstract; cols. 3-7) disclose the vehicular motion control apparatus as claimed in claim 1, wherein the vehicular motion control mechanism comprises a rear road wheel steering angle providing section (43, 15) that provides a rear road wheel steering angle for the vehicle, the state detecting section comprises a rear road wheel steering angle detecting section that detects the rear road wheel steering angle, the control command value calculating section comprises a rear road wheel steering angular command value calculating section, and the rear road wheel steering angle command value calculating section.

In claims 2-11, the limitations “becomes or made larger”, “becomes smaller”, “provides a rear road wheel steering angle”, “detects a”, “approaches the”, “is lower than”, “irrespective of”, “calculates a target”, “etc clauses are essentially method limitation or statement of intended or desired use. Thus, the claim as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647. See MPEP § 2114 which states:

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

### *Communication*

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronnie Mancho whose telephone number is 571-272-6984. The examiner can normally be reached on Mon-Thurs: 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ronnie Mancho  
Examiner  
Art Unit 3663

6/12/06

A handwritten signature in black ink, appearing to read "Ronnie Mancho". The signature is fluid and cursive, with "Ronnie" on the left and "Mancho" on the right.